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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554  
Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Parts 21 and 74 To Enhance  
The Ability of Multipoint Distribution  
Service And Instructional Fixed Television  
Fixed Service Licensees To Engage In Fixed  
Two-Way Transmissions

File No. RM-

To: The Commission

**COMMENTS**

Hispanic Information and Telecommunications Network, Inc., ("HITN"), hereby submits its comments in the above-referenced proceeding in response to the Request for Rule Making filed by the Wireless Cable Association and many members of the wireless cable industry ("Petitioners"). The parties to the Petition for Rule Making request that the Commission revise Parts 21 and 74 of its rules to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to provide two-way services. More specifically, the proposed rules would establish a regulatory framework under which licensees will be permitted to use all or part of a 6 MHz channel as return paths from subscriber premises, to cellularize their transmission systems, and to use subchannels (i.e., the transmission of multiple signals over a single channel) or superchannels (i.e., the transmission of a single signal over multiple adjacent channels) for digital transmissions in either direction.

Petitioners allege that adoption of the proposed rule

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revisions is necessary if wireless cable operators and educators are to take full advantage of the MDS and ITFS spectrum in offering the variety of two-way communications services the marketplace is beginning to demand.

The Petitioners have included a lengthy list of proposed rule revisions accompanied by an explanatory note that provides a detailed analysis of why the specific proposed rule change is requested.

The petitioners allege that the wireless cable industry is under increasing competitive demand to provide highspeed two-way services to subscribers, such as Internet access. At the same time, it is alleged that the educational community is desirous of securing the high-speed Internet access services that ITFS channels are well-suited to providing.

The Commission's rules have always provided MDS and ITFS licensees with the flexibility to offer non-video services. However, while the Commission has long afforded MDS and ITFS licensees access to channels for return path links, those channels are of insufficient bandwidth and are not properly channelized to accommodate contemporary needs.

The Petitioners maintain that, in crafting the proposed rules, the objective has been to provide maximum flexibility, while at the same time affording Basic Trading Area ("BTA") authorization holders, incumbent MDS stations and ITFS stations interference protection equivalent to that they receive today. In order to achieve that objective, the proposed interference protection rules

are necessarily complex. However, the Petitioners are proposing a variety of regulatory approaches in order to minimize the burden this complexity imposes on the Commission's staff. Most importantly, the proposed interference protection rules are only applicable where neighboring channel rights holders cannot reach an agreement as to the configuration of their systems. Where neighboring interests can agree, the detailed interference analyses called for by the proposed rules can be replaced by simple consents. Where neighbors cannot agree, special application processing rules have been proposed in order to eliminate bottlenecks and expedite the initiation of service to the public.

HITN has two major objections to the rules as proposed by Petitioners. As the Petitioners themselves admit, the proposed rules changes are enormously complex. While the Petitioners have done a commendable job in compiling a complex proposal, HITN is convinced that the proposal is too complex to be rushed through on the fast track proposed by Petitioners. While the desire to be the first entity in the marketplace to offer wireless Internet access is an admirable goal, the proposal is too complex to be adopted in a rush to judgement concerning these thorny and technically convoluted proposals.

Specifically, the interrelationships between the technical proposals and the Commission's rules, as both currently constituted and as proposed by petitioners, must be examined at great length before the Commission can adopt the rules changes proposed. The petitioners propose a revolutionary change in the fundamental

nature of the ITFS service. This cannot be done overnight, or even in the time frame suggested by the Petitioners. At the very least, the Commission should adopt a "go-slow" approach. Perhaps such an approach might mirror the plan recently adopted in the Commission's ATV proceeding, where the Commission has established a priority list of markets which permits digital conversion according to market size and according to a certain schedule. At the very least, the Commission should limit the adoption of these rules to the top markets first, with a schedule established for phase in by the remaining markets once the first markets have demonstrated the efficacy of cellularized MDS systems with return path capability. In any event, some restraint must be shown to allow the development of an untested cellularized, two-way MDS/ITFS systems in a controlled fashion.

Also, the Petitioners' proposal unduly wrests licensee control from the hands of ITFS licensees and would vest such control in commercial wireless cable operators. This cannot be condoned.

HITN addresses the Petitioners proposal specifically as follows.

**I. Petitioners Overstate Demand for Wireless Internet Access**

**A. Commercial Demand**

As noted above, the petitioners allege that the wireless cable industry is under increasing competitive demand to provide high-speed two-way services to subscribers, such as Internet access. This perceived demand, in fact, is the philosophical underpinning of the whole proceeding. Petitioners make such statements as

Over the past year, it has become clear that merely providing consumers with more of the same video programming through digitization may not be enough for wireless cable to succeed in the video marketplace. As a result of changing consumer demand and marketplace response, wireless cable operators will have to do more if they are to be viable competitors in the marketplace... The public is demanding increasingly higher speed data links for home, business and educational use, particularly to better access the graphics-rich World Wide Web (citation omitted). Even with the widespread availability of reasonably priced 28.8 Mbps modems, delays in accessing Web pages are driving home, business and educational users to search for higher speed alternatives to the twisted pair wired local telephone loop. As a result, many communications providers that had not previously offered high speed data access are now developing service offerings to meet that demand for a high speed alternative to twisted pair.

Petitioners offer little or no statistical data to support these claims. Without such substantiation, the Commission's complete overhaul of the wireless cable rules without substantial deliberation is unwise.

While HITN agrees with the principle that generally the presence of competition is beneficial to consumers, it is clear here that demand by the wireless cable industry far outstrips consumer demand for two-way service. The Petitioners are clearly attempting to stay ahead of the demand curve, rather than wait for its appearance to substantiate the need for two-way service. While the advent of two-way service is perhaps inevitable, it is the speed at which the Petitioners seek its creation which concerns HITN at this juncture.<sup>1</sup>

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<sup>1</sup> It should be kept in mind that the commercial success of service cannot be the basis for the Commission's promulgation of rules in this proceeding. For example, the Commission has steadfastly refused to heed the entreaties of IVDS licensees who seek regulatory assistance while the nascent industry develops to

B. Educational Demand

The Petitioners also maintain that the educational community is also desirous of securing the high-speed Internet access services that ITFS channels are well-suited to providing. The Petitioners accurately point out however that the current Administration believes that:

affording Internet access with "an increased ability to handle real-time, multimedia applications such as video-conferencing and "streams" of audio and video - very important for . . . distance education."<sup>2</sup>

As with the commercial demand, this claim is largely unsubstantiated. However, if Internet access is so important to Petitioners, the Commission, and our society in general,<sup>3</sup> then the Commission, in tandem with its recent decision in *The Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, released May 8, 1997, the Commission should require mandatory Internet access by wireless cable operators at no charge to qualified entities in the service area in return for the commercial

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the point i]that it can survive. Equal treatment requires that commercial considerations should not be the basis of the Commission's decision here.

<sup>2</sup> Thus, Petitioners draw the conclusion that "Low-speed access to the Internet, however, is not enough."

<sup>3</sup> Petitioners note:  
As the Commission has made clear on innumerable occasions recently, the Internet is not just a consumer phenomenon, but it is also having a profound impact on the way in which students are taught. It is now beyond peradventure that when properly employed, educational technology improves student performance. The Internet, in particular, holds great promise as an educational tool

operator's ability to offer two-way service. This will go a long way toward helping the Commission achieve its goal of universal Internet access in the classrooms.

C. Commission Should Avoid Imposing Further Regulatory Burdens

HITN generally agrees with Petitioners that:

Other than the Commission's technical rules, the greatest impediments to the introduction of two-way services by wireless cable operators and educators are the Commission's Rules governing ITFS usage. If two-way MDS and ITFS services are to become a reality, the Commission must modify its ITFS usage rules to reflect evolving needs... The time has come, however, for the Commission to establish formal rules that will allow MDS and ITFS operators to develop and market interactive services which take full advantage of digital technology, without the limitations, risks and inconveniences associated with short-term developmental authorizations or licenses that only permit service to a small number of individually-licensed receive sites.

It would appear that, should the Commission adopt rules which permit some type of cellularization of wireless cable systems, that individual licensing by FCC is completely impractical, and would result in regulatory gridlock. However, consistent with HITN's concerns expressed above, that is no reason to abandon all regulatory oversight on the proposed licensing process.

II. ITFS Licensees Must Retain Complete Control of Their FCC Licenses

Of the greatest concern to HITN is the fact that the Petitioners' proposal unduly wrests licensee control from the hands of ITFS licensees and would vest such control in commercial wireless cable operators.

For instance, on the issue of concern to the Petitioners is Section 74.931(e)(9) of the Commission's Rules, which Petitioners believe effectively mandates that at least one channel of every four channel groups be used for educational programming. This is problematic because:

system developers will attempt to utilize contiguous 6 MHz channels for two-way services in order to minimize the amount of spectrum that will be lost to the proposed spectral mask whenever a return path channel is adjacent to a channel used for outbound transmissions. Depending upon the demand for two-way services, it may be that entire ITFS channel groups will have to be devoted for return paths.

Thus, two-way services may only be practical in many cases if an ITFS licensee can provide its entire channel capacity for two-way services and satisfy its minimum ITFS programming obligations utilizing channels other than those for which it is licensed. However, because Section 74.931(e)(9) mandates that each ITFS licensee satisfy the minimum programming requirement using at least one of its own channels, that section effectively precludes such a system configuration.."

The Petitioners then state that they are not suggesting that an ITFS licensee should be forced to shift its programming off of its channels. What they are proposing is that each ITFS licensee be granted the flexibility, in its sole discretion, to shift its ITFS programming to other channels without jeopardizing its license.

Elsewhere in the Petition For Rule Making, the Petitioners state that "Before turning to the specific rule revisions being requested by the Petitioners, it is important to emphasize what the Petitioners are not seeking - they are not seeking any significant change in the uses to which MDS and ITFS channels can be put."

However, the Petitioners propose to amend Section 21.2 of the rules to create a new type of MDS station called a "Response



Station Hub" and to change the rules with respect to MDS response stations. In both cases, the eligibility for the authorization of these stations is limited to the MDS licensee or operator, not the ITFS licensee whose signal is being retransmitted. See also Section 21.909 as proposed. Furthermore, Section 21.913 (a) as proposed eliminates eligibility for ITFS applicants, while creating eligibility for an MDS licensee or operator.

Section 21.903 (a) as proposed puts no limits on the retransmission of the MDS signal by the associated booster and response stations.

With respect to the ITFS rules, Section 74.901 (a) as proposed creates the eligibility for the authorization of ITFS response and booster stations for the ITFS licensee or the lessee of ITFS channel capacity. Section 74.939 (a) as proposed also creates the eligibility for the authorization of ITFS response and booster stations for the ITFS licensee or the lessee of ITFS channel capacity.

Petitioners' protestations to the contrary, the above litany of changes all seem to vest unfettered control in the hands of the MDS licensees and operators who hold excess airtime agreements with the ITFS licensees in their system. This cannot be condoned. The rules must contain provisions which explicitly state that an ITFS signal may not be originated, retransmitted, shifted to a different channel configuration or altered in any way without the express consent of the underlying licensee. Without this protection, ITFS licensees will lose total control of their signal, and the very

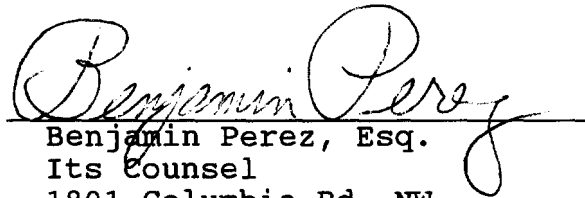
nature of their function as educational FCC licensees. This will destroy the ITFS service, relegating it to the status of an auxiliary service for the commercial enterprise of wireless cable.

WHEREFORE, the foregoing premises considered, Hispanic Information and Telecommunications Network, Inc., respectfully requests that the Commission incorporate its comments in to the rules adopted pursuant to the *Notice of Proposed Rulemaking* proposing to adopt the revisions to Parts 21 and 74 proposed by Petitioners.

Respectfully Submitted,

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